

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

In Re:

CONSOLIDATED MERIDIAN
FUNDS, a/k/a MERIDIAN
INVESTORS TRUST, et al.

Debtors.

Consolidated Case No. 10-17952

**DECLARATION OF MARK CALVERT
IN SUPPORT OF THE TRUSTEE'S
OPPOSITION TO MOSS ADAMS
LLP'S MOTION FOR
RECONSIDERATION OF THE
COURT'S APRIL 5, 2013
MEMORANDUM DECISION**

**DECLARATION OF MARK CALVERT IN SUPPORT OF
THE TRUSTEE'S OPPOSITION TO MOSS ADAMS LLP'S
MOTION FOR RECONSIDERATION
(No. 10-17952)**

OSBORN MACHLER
2125 Fifth Avenue
Seattle, WA 98121
206-441-4110

1 I, Mark Calvert, hereby declare as follows:
2

3 1. I am the Liquidating Trustee of the Meridian Inventors Trust and was
4 previously the Chapter 11 Trustee of the Debtors in this proceeding. I am over the age
5 of (18) years old and competent in all ways to testify. I make this declaration on
6 personal knowledge and my review of the records in my possession, and if called to
7 testify to the matters, would and could do so.
8

9 2. On February 14, 2013, I testified as to certain examples of documents
10 that should have been timely produced but were not. These examples were not meant
11 in any way to be an exhaustive list of the numerous types of documents Moss Adams
12 failed to produce – they were merely meant to be examples. Had I meant my testimony
13 to provide an exhaustive list, I would have testified to a number of additional individual
14 work papers and emails Moss Adams failed to timely produce but later produced after
15 motion practice began (i.e. the Lighthouse documents). Importantly, it has never been
16 my obligation to inform Moss Adams of every document the firm failed to timely
17 produce nor would I necessarily have the requisite knowledge to determine every
18 document Moss Adams failed to produce because they were, after all, *Moss Adams'*
19 documents.
20

21 3. My review of the documents produced by Moss Adams was severely
22 hampered by the method in which Moss Adams produced the documents and the fact
23 that they were not produced as kept in the ordinary course of business. Despite this
24 fact, since the hearing on February 14, 2013, I have had occasion to again review Moss
25 Adams' production of documents from August 2010. Following this review, I have
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1 concluded the following: (1) Moss Adams did produce *some*, but certainly not *all*, of
2 the trial balances and loan ledgers in August 2010 and (2) Moss Adams' did not
3 produce *all* documents and work papers they were required to produce in August 2010,
4 including *all* trial balances and loan ledgers, thus severely hindering my efforts as
5 Trustee. For clarity, by trial balances I mean all types of trial balances (including but
6 not limited to work trial balances, loan trial balances, REO trial balances, investor trial
7 balances, and all subsidiary trial balances) for all of the relevant funds for all relevant
8 years.

9
10 4. Moss Adams' Motion for Reconsideration takes out of context my
11 testimony regarding the records of Meridian. Seeing as I testified about having records
12 of Meridian, I certainly did not mean to convey that I did not have *any* of Meridian's
13 books, but rather meant to convey I did not have *all* of Meridian's books and
14 supporting records. And, as to those records I did have, upon my appointment as
15 Trustee I quickly determined that such records, and especially Meridian's electronically
16 stored information ("ESI") had major problems. For example, (a) there were errors in
17 the data; (b) the files were incomplete; (c) not all the information was stored in one
18 place; (d) there were different versions of the same document with different numbers;
19 and (e) some early files were missing that were needed to show the flow of funds.
20 Meridian did not operate a paperless office. In fact, I believe four to five pallets of
21 Meridian paper documents were seized by the FBI, and a significant amount of
22 information was not stored electronically. Thus, in short, Meridian's records did not
23 have all the documents I needed, including all necessary trial balances, and even if a
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document existed on Meridian's servers, that did not mean the document was accurate or that the document tied to the audited financial statements.

5. With regard to Meridian's Quickbooks in particular, not all of Meridian's books were kept on Quickbooks and Meridian's Quickbooks did not include all loan trial balance detail. While there was a balance in Quickbooks for loans receivable, I was looking for the detail that tied to the financial statements so that I could confirm the loan was paid off.

6. Because Meridian's electronically stored information ("ESI") information was incomplete and would not tie to the audited financial statements and because I needed to determine what claims for what years might exist against Moss Adams, I sought *all* work papers, including *all* trial balances and loan ledgers, from Moss Adams. Specifically, as a result of the problems with Meridian's ESI, I determined that a complete set of Moss Adams' work papers would provide a focal point to start my forensic analysis and that such documents from Moss Adams would help show the reliability (or lack therefor) of the ESI and hard copy records of Meridian that I was able to obtain. That is, I decided the best place to start unraveling the puzzle was with the audited financial statements, tying those back to the trial balances in Moss Adams' possession supporting the financial statements, tying those back to the working trial balances, tying those back to the source documents, etc. Specifically, my original plan was to take each year's audit, prove the fraud existed in that year's balance sheet and document the insolvency at the end each year, then roll forward the balance sheet each year, carrying forward the fraud which was proven in prior years and document the new fraud each year. However, Moss Adams' failure to produce *all* work papers for every

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1 year starting with 1999 (i.e. starting with the Lighthouse documents) made this
2 impossible. It was for this reason that I reverted to a cash in and cash out analysis using
3 bank statements.
4

5 I declare under the penalty of perjury of the laws of the United States of
6 America that the foregoing is true and correct.

7 DATED this 24th day of May, 2013, at Seattle, WA.
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9 By: /s/ Mark Calvert
10 Mark Calvert
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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2013, I electronically filed the foregoing with the Clerk of the U.S. Bankruptcy Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to the following:

Kelly P. Corr
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Attorneys for Defendant Moss Adams LLP

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECM participants:

Frederick Darren Berg
Inmate No. 17950-086
FCI Lompoc
Federal Correction Institution
3600 Guard Road
Lompoc, CA 93436
Pro Se

Dated May 24, 2013, at Seattle, Washington.

/s/ Kathryn R. Bue
Kathryn R. Bue

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